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| ISAAC GARZA, |) | Case No. CV 13-6697-DSF (DTB) |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | ORDER SUMMARILY DISMISSING |
| |) | PETITION FOR WRIT OF HABEAS |
| DAVE DAVEY, Acting Warden, |) | CORPUS WITHOUT PREJUDICE |
| |) | |
| Respondent. |) | |

Respondent's Motion to Dismiss with respect to Ground Two was granted with leave to amend and petitioner was ordered to either: (a) File an amended petition withdrawing the unexhausted claim or otherwise voluntarily dismiss the unexhausted claim, or (b) file a consent to dismissal of this action without prejudice if petitioner elects to return to state court to exhaust his unexhausted claim on or before November 5, 2014. Petitioner was cautioned that his failure to file an amended petition

1 withdrawing the unexhausted claim or a consent to dismissal on or before November
2 5, 2014, would be construed as his consent to dismissal of the entire action and would
3 result in such a dismissal. Petitioner has failed to file an amended petition or a
4 consent to dismissal within the allotted time, and has not requested an extension of
5 time within which to do so. Accordingly, the Court hereby construes petitioner's
6 failure to file such as his consent to dismissal of this action.

7 For the foregoing reasons, IT IS ORDERED that this action be summarily
8 dismissed without prejudice.

9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10
11 1/23/15

12 Dated: _____



13 DALE S. FISCHER
14 UNITED STATES DISTRICT JUDGE

15 Presented by:



16 _____
17 David T. Bristow
18 United States Magistrate Judge
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